



**MNK v BK (Family Miscellaneous Civil Case E001 of 2024)
[2024] KEHC 9491 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9491 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
FAMILY MISCELLANEOUS CIVIL CASE E001 OF 2024**

**TA ODERA, J
JULY 4, 2024**

BETWEEN

MNK PETITIONER

AND

BK SUBJECT

RULING

1. The Applicant herein namely MK moved the court vide a Petition dated 5th March, 2024 under section 26, 27 and 28 (1) of the [Mental Health Act](#) CAP 248 for the following orders:

i. That she be appointed guardian ad litem for BK the subject herein.

She told this court that she is a daughter to the subject who is 94 years old suffering from Parkinsonism disease from the year 2015 as per the medical report dated 26.2.24 by Shem Nyabuto a clinical officer based at Tabaka Mission hospital. The petitioner stated that the subject is unable to manage her own affairs due to the said disease which has affected her right side of the body, mental status and right hand. Also that she is a party in Kisii Environment & Land relations case number 145 of 2019 which is pending hearing and determination and she cannot effectively participate in the same in her current status. This court called for a letter from the area Chief showing the nuclear family of the deceased and a letter dated 24.5.24 from the Chief Bonyagwanga location was filed herein. The said family also appeared in court on 24.6.24 and unanimously agreed with the petition. This court also saw the subject in court on 14.5.24 and established her mental status as stated in the medical report and the petition. The proceeds accruing to the estate from any source or claim be held in trust and for the benefit of the subject.



- v. there be no orders as to costs.

Analysis And Determination

2. I have carefully considered the petition the supporting affidavit of the petitioner and all the annexures attached to it and the issue for determination is whether this court should allow the application and grant guardianship orders of the subject to the applicant herein.

Section 2 of the *Mental Health Act* Cap 248 provides that:

“A person suffering from mental disorder” means a person who is suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”

3. Section 26 of the *mental health Act* empowers the court to grant custody, management and guardianship orders the said section provides;

“(1) The court may make orders:

- a) For the management of the estate of any person suffering from mental disorder, and
- b) For the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person
- c) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.
- d) Where upon inquiries it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think just for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.”

4. Section 27 provides for powers of a managers of the estate of a patient while Section 28 of the same Act provides for management of the subject's estate.

5. I have perused the petition and the affidavit of the applicant and the letter from Tabaka Mission Hospital and I am satisfied beyond doubt that the patient is suffering from acute Parkinsonism disease and thus has mental incapacity under section 2 of the *Mental Health Act* and thus unable to manage his affairs.

6. On whether Applicant should be appointed as guardian/ manager to the patient's estate. She says she is a daughter to the subject. She has been introduced by the letter from the area Chief. All Children of the subject attended court and consented to the applicant being granted guardianship orders. It is



clear that the subject is mentally challenged and is in need of special care and protection and there is no objection to the applicant being appointed as some guardian ad litem.

7. I find that the petition is merited. The applicant is appointed guardian ad litem of the subject and her estate. Any proceeds from her estate be held in trust for her and be utilized in her best interest. File is closed.

T.A ODERA

JUDGE

4.7.24

DELIVERED IN OPEN COURT AT KISII ON THIS 4TH DAY OF JULY 2024

